



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Braswell Services Group, Inc.

File: B-276694

Date: July 15, 1997

William A. Scott, Esq., Pedersen & Scott, for the protester.

Daniel L. Martin, North Florida Shipyard, Inc., an intervenor.

Rhonda Russ, Esq., and Capt. J. L. Biliouris, Department of the Navy, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation reasonably reflected the agency's minimum needs and provided sufficient information for offerors to intelligently prepare technical proposals and to submit prices which will take into account perceived performance uncertainties and risks.

DECISION

Braswell Services Group, Inc. protests the terms of request for proposals (RFP) No. N62670-97-R-0004, issued by the Supervisor of Shipbuilding, Conversion and Repair, Department of the Navy, for repairs to the USS Philippine Sea, a guided missile cruiser. The protester basically contends that, as drafted, the RFP requirements involving staff-days for reserve work and specified personnel positions and the RFP evaluation scheme prevent it from intelligently preparing a proposal.

We deny the protest.

The RFP, issued on March 5, 1997, contemplated the award of a 3-month firm, fixed-price contract to the responsible offeror whose proposal was determined most advantageous to the government, past performance and price considered. Concerning the past performance evaluation factor, the RFP listed three subfactors--quality of product or service, timeliness of performance, and contracting/business relations. Each subfactor contained several elements, for a total of 18 elements. Concerning price, the RFP stated that an offeror's price would be evaluated for reasonableness and whether it reflected the offeror's understanding of the work and the firm's ability to perform the contract. In determining the proposal most advantageous to the government, the RFP stated that the "[p]ast performance factor is more important than the [p]rice factor."

The protester, a firm experienced in performing ship repairs for the government, including work on the USS Philippine Sea under a previous contract, filed this protest prior to the closing time for receipt of proposals on April 8.

Requirements for Staff-days for Reserve Work and Specified Personnel Positions

The RFP specified more than 100 "work items" to be performed by the contractor. For most of these items, an offeror's proposed price was to reflect its judgment regarding the staff-days and/or material required to perform the basic work under a particular work item. For 34 of the work items, however, an offeror was also required to include in its proposed price an amount for additional staff-days and/or material reserved for work which was unknown prior to award, that is, initially unanticipated work which ultimately may be necessary to complete the work item. For the work items which included a reserve provision, the RFP provided a number of staff-days and a dollar amount for material. The RFP reserved a total of 1,122 staff-days and \$104,975 for material.¹

The protester complains that it is unable to provide staffing information, as required by the RFP, for reserve work because the RFP includes insufficient detail concerning the reserve work, for example, the type of craft required and when the work will be needed.

An agency is responsible for drafting proper specifications to meet the government's minimum needs. In preparing for a procurement, the agency must develop specifications in such a manner as is necessary to achieve full and open competition in accordance with the nature of the property or services to be acquired. See 10 U.S.C. § 2305(a) (1994). A solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis. Sunbelt Properties, Inc., B-249469 et al., Nov. 17, 1992, 92-2 CPD ¶ 353 at 4. However, there is no legal requirement that a competition be based on specifications drafted in such detail as

¹For example, work item No. 993-11-001, titled "Crane and Rigging Services for Alteration Installation Team," required for the basic work that the contractor "[p]rovide crane services for one hour per day cumulative to 5 hours per week, with operator[s] and riggers for loading, unloading, and transporting . . . material, supplies and equipment throughout the availability as directed by the [government]." The RFP described minimum features for a crane, forklift, and storage container to perform the basic work. The work item also contained a reserve work provision requiring the contractor to "[p]rovide 20 [staff-]days of labor and 500 dollars of material for support of the . . . work package throughout the availability as directed by the [government]. Total cost of support greater or less than above [staff-]day and dollar amounts will be the subject of an equitable adjustment."

to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Id.

Contrary to the protester's assertion, the RFP contains sufficient information to permit it to submit staffing charts for reserve work. Using the example noted above, it is clear that the reserve work covers the same services required for the basic work--crane and rigging services with operators and riggers loading, unloading, and transporting material, supplies, and equipment. To accomplish this reserve work the contractor will need a crane, fork lift, and storage container as required for the basic work. (The RFP describes the minimum required features for the equipment.) The RFP specifies the number of staff-days and a dollar amount for this reserve work, and provides for an equitable adjustment in the event the additional work involves more or less than the specified staff-day and dollar amounts. The reserve work will be ordered by the government if determined necessary after reviewing what was accomplished during the contractor's performance of the basic work.

While there may be some uncertainty and risk in that more or less time and material may be necessary for contractor personnel to perform specified reserve work, we conclude that the agency could not reasonably eliminate all performance uncertainties and risks in drafting its requirements. In this regard, the agency reports that historically, the precise need for, and the extent of, any reserve work is generally not known until after award and after a basic work item is performed; at that time, the agency can reasonably decide if any of the reserve work is necessary to complete the work item. For each reserve work provision corresponding to a basic work item, the agency has provided its best estimate of staff-days and material necessary to complete any reserve work and has mitigated any risks to offerors by including an equitable adjustment provision.²

²In its comments on the agency report, the protester, based on its previous experience in performing three ship repair contracts for the government, including repairs to the USS Philippine Sea, contends that the agency has overstated its minimum needs, that is, the agency has overestimated the number of staff-days necessary for the performance of reserve work. To support its contention, the protester provides percentages of reserve staff-days ordered by the government under each of its contracts. The protester reports that for each contract, the number of staff-days ordered was significantly less than the estimate in the particular RFP. Based on its previous experience, the protester argues that the estimates in the current RFP do not accurately reflect the agency's minimum needs. However, we conclude that this argument, made for the first time more than a month after the April 8 proposal due date in the protester's comments on the agency's administrative report, is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior
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Because of the variable nature of shipboard conditions, we do not believe the agency could reasonably be expected to do more than it did in specifying its requirements. In fact, we think the agency could reasonably expect offerors, like the protester, to use their business judgment, including their experience with prior ship repair contracts, in preparing their proposals to reflect the risk of being asked to perform reserve work which might be required after the performance of basic work to address unforeseen additional and necessary repairs. We point out that in A&E Indus., Inc. et al., B-226997 et al., June 19, 1987, 87-1 CPD ¶ 616 at 5, a case involving virtually the identical issue, we rejected the argument that a solicitation for ship repair services was defective for allegedly lacking detail regarding the ordering of reserve work. We concluded that since the solicitation specified the total number of additional hours which may be ordered, limited the timing of the additional work over the life of the contract, gave estimates by general category of the additional work, and specified the required personnel experience levels, the solicitation contained sufficient information to enable offerors to intelligently prepare their proposals. We reach the same conclusion in this case.

The RFP also contained a management organization plan to ensure that contractor personnel were available to ensure timely completion of the work. The RFP listed seven minimum personnel positions for specific functional areas and stated that the individual assigned to a particular position could not be assigned any other duties during the performance of this contract and was limited to performing only one of the functional areas.

The protester complains that the management organization prescribed by the RFP exceeds the agency's minimum needs and that an offeror, not the agency, should be able to determine how to assign and manage its contract personnel.³

The agency reports that the USS Philippine Sea is a technologically complex guided missile cruiser, and in performing the contract, the contractor will be required to

²(...continued)

to the closing time for receipt of initial proposals must be filed prior to that closing time. 4 C.F.R. § 21.2(a)(1) (1997). Issues regarding the accuracy of a government estimate, where contractors, like the protester, are on notice of the inherent unpredictability of a particular type of estimate because of the firm's incumbency status or experience in the field, must be raised prior to the stated closing time. Allstate Van and Storage, Inc., B-270744, Apr. 17, 1996, 96-1 CPD ¶ 191 at 3.

³For the first time in its comments on the agency report, the protester makes specific arguments concerning each of the seven personnel positions in the context of arguing that the prescribed management organization exceeds the agency's minimum needs. These post-closing time arguments are untimely. 4 C.F.R. § 21.2(a)(1).

perform work on, among other things, fuel oil tanks, gas turbine generators, combustion air intakes, and the vertical launching system. The RFP provides for a 3-month performance period. The agency estimates that 70 production days and 15 testing days, involving thousands of staff-days, will be required to perform the work items described in the RFP. The agency expects that contractor personnel will be required to work multiple shifts and overtime, and the contractor will be required to manage and coordinate numerous subcontractors. Since a contractor's performance of many job critical work items is contingent upon the contractor timely starting or completing other work items, the agency states that the assignment of seven individuals to specific functional areas provides the government with reasonable assurances that the contractor's management organization will be available to react to problems that arise during contract performance and to communicate with the government concerning problem resolution. By requiring the exclusive assignment of individuals to particular functional areas for this contract only, the agency believes it will minimize the government's exposure to schedule delays, increased costs, and risks to the safety of ship personnel, any one of which could adversely impact the ship's availability in the event of a military crisis.

We believe the agency has reasonably justified its minimum needs. The period of performance for this technologically complex, labor intensive effort is a relatively short 3-month period. Because of the government's critical need to have all work completed and the ship available at the end of this period, the agency has imposed on all potential offerors a minimum management organization plan requiring the dedication of seven individuals to this specific contract effort. In light of the RFP's compressed performance period, the technologically complex nature of the ship and its systems, the large number of work items as described in the RFP (more than 100 basic work items with 34 reserve work items), and the need to minimize potentially adverse effects resulting from schedule delays, increased costs, and safety risks, we think the agency has not overstated its needs by requiring the contractor to dedicate to this contract effort seven individuals who are, in the agency's reasonable view, key to the timely and successful completion of this contract.⁴

Evaluation Scheme

The protester also complains that the RFP's evaluation scheme is defective because in describing the relative importance of past performance to price for purposes of determining the proposal most advantageous to the government, the RFP simply states that the "[p]ast performance factor is more important than the [p]rice factor." (Emphasis added.) The protester maintains that the agency has failed to

⁴The agency reports that the protester has been awarded six scheduled availability contracts with the management organization provision described above.

appropriately state the relative importance of past performance to price in accordance with Federal Acquisition Regulation (FAR) § 15.605(d)(1) (FAC 90-31) which provides that a solicitation "shall state whether all evaluation factors other than cost or price, when combined, are--(i) [s]ignificantly more important than cost or price; (ii) [a]pproximately equal to cost or price; or (iii) [s]ignificantly less important than cost or price." The FAR language tracks the statutory language at 10 U.S.C. § 2305(a)(3)(A)(iii).

At a minimum, a solicitation must set forth all significant evaluation factors and subfactors and their relative importance. 10 U.S.C. § 2305(a)(2)(A); FAR § 15.605(d)(1); Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 6. The basic concern is that offerors know from the RFP what importance an agency will place on technical evaluation factors vis-a-vis cost/price so that these offerors can compete intelligently and on an equal basis. Serv-Air, Inc., B-194717, Sept. 4, 1979, 79-2 CPD ¶ 176 at 6-7. While the statutory and regulatory provisions also require an RFP to indicate "whether" non-cost/price evaluation factors are significantly more or less important than cost/price or approximately equal to cost/price, here the agency reports that it considers past performance "more important," but not "significantly more important," than price for determining the most advantageous proposal.

In such circumstances, we see no reason to object to the RFP evaluation scheme. We have long recognized that an agency, in disclosing the relative weights of RFP evaluation factors, properly could do so simply by listing the factors in descending order of importance, provided that one of the factors was not weighted disproportionately to the others. See Sperry Rand Corp., Univac Div., B-179875, Sept. 12, 1974, 74-2 CPD ¶ 158 at 11; BDM Servs. Co., B-180245, May 9, 1974, 74-1 CPD ¶ 237 at 7-8. We think the statutory and regulatory provisions relied on by the protester are consistent with those decisions. In other words, we believe the statement required by FAR § 15.605(d)(1) is to be included in solicitations where the combined weight of the evaluation factors other than cost/price is significantly more or less than (or approximately equal to) the weight accorded to cost/price. Where the combined weight of the non-cost/price evaluation factors is not significantly more or less important than (but not approximately equal to) cost/price, as the agency states is the case in this procurement, the FAR provision is satisfied by what the agency did here.

In its comments on the agency report, the protester also takes exception to certain descriptive terms/phrases used by the agency for eight elements in the past performance evaluation scheme. For example, the protester complains that terms/phrases such as "appropriateness of contractor personnel assigned to the contract" and "responsiveness to technical direction" are ambiguous, thereby precluding offerors from knowing what the agency is evaluating with respect to past performance. However, the protester was aware of all aspects of the RFP's past performance evaluation scheme prior to the closing time for receipt of initial

proposals. Accordingly, the protester was required to raise in its initial protest prior to the stated closing time all arguments regarding any alleged defects in the terms of the RFP. Because our bid protest regulations do not contemplate the piecemeal development of protest issues, we will not consider these new post-closing time issues. 4 C.F.R. § 21.2(a)(1); Educational Media Div., Inc., B-193501, Mar. 27, 1979, 79-1 CPD ¶ 204 at 5.⁵

The protest is denied.

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⁵We also point out that, while the protester infers hostile intent from what is apparently a history of contract disputes between the protester and the agency, the agency is required to evaluate past performance in accordance with the terms of the RFP. Contrary to the protester's assertion, there is nothing in the record which indicates that the RFP's evaluation scheme is intended to, or is structured to, lessen competition by favoring long-established, local contractors.